application of which depends upon the precise weight of the elements which fall into each pan of the scales. And it may be doubted whether some of the courts which have wholly repudiated the doctrine might not yield to it if confronted with the circumstances which were first presented in the principal case. Yet it might be argued that those particular circumstances arising out of the conduct of the war are such as no court should take into account. In *Driver* v. *Smith,* 104 Atl. 717, the court said that it would not refuse specific performance of a contract on the ground that its enforcement would be detrimental to a war industry, saying that "It would be an intolerable situation if each court before whom the rights of individuals were to be litigated permitted to determine whether the relief should be granted or withheld upon its opinion as to whether the granting of the injunction would aid or injure the government in its war activities." Approved in 17 MICH. L. REV. 376. And the decision in *Rosenwasser Bros., Inc.,* v. *Pepper,* 172 N. Y. Sup. 310, that the court might enjoin a strike merely on the ground that it interfered with the prosecution of the war, was adversely criticised in 32 HARV. L. REV. 376. These arguments, however, are but a restatement of the objection to the whole doctrine of the balance of convenience, that it is for the courts to give their remedies solely upon the basis of existing legal rights, and for the legislature to vary these rights, if the occasion requires. It is, however, by many courts, held a proper ground for refusing an injunction against nuisance. 18 MICH. L. REV. 703. Yet, it may be conceded, if the doctrine is to be accepted at all, there is no reason why the court should not consider, with all the other elements in the case, the peculiar public interest growing out of the prosecution of the war.

NUISANCE—FUNERAL HOME IN RESIDENTIAL DISTRICT.—An undertaker purchased and used as a funeral home a dwelling house in an exclusively residential district. The spirits of the residents were depressed, their comfort and enjoyment interfered with, and their property depreciated in value. *Held,* a nuisance which may be enjoined. *Beisel, et al* v. *Crosby* (Neb., 1920), 178 N. W. 272.

In the early case of *Westcott* v. *Middleton,* 43 N. J. Eq. 478, where under similar circumstances an injunction was refused, the court emphasized the fact that the discomfort complained of was not produced through the medium of the senses. A group of recent cases illustrates the tendency of the courts to disregard this requirement and to recognize that mental distress and depression, as well as physical discomfort may interfere with the comfortable enjoyment of property. In the following cases injunctions were granted against undertaking establishments in residential districts, though there were no noxious odors and no danger of disease. *Densmore* v. *Evergreen Camp No. 147,* 61, Wash. 230; *Saier* v. *Joy,* 198 Mich. 295; *Goodrich* v. *Starrett,* 184 Pac. 220. Injunctions against private hospitals and asylums have frequently been granted on substantially the same grounds. *Barth* v. *Christian Psychopathic Hosp. Assn.,* 163 N. W. 62; *Everett* v. *Paschall,* 61 Wash. 47. For recent cases holding valid ordinances declaring it unlawful to maintain undertaking

parlors except in business districts see *City of St. Paul* v. *Kessler, et al.*, 178 N. W. 171; *Osborn* v. *City of Shreveport*, 143 La. 932. See also 18 MICH. L. REV. 246.

PUBLIC UTILITIES RATES—POWER OF COMMISSION TO CHANGE CONTRACT RATES.—A traction company obtained consent of the city of New York to construct and operate a street railway. The consent was given upon the condition that five cents should be the maximum fare. The successor to the rights of the traction company applied to the Public Service Commission for authority to charge a higher fare on the ground that the five cent fare was inadequate to enable the company to continue service. The city secured a writ of prohibition directed to the commission. *Held,* that the order issuing the writ should be reversed. *People* v. *Nixon* (N. Y., 1920), 128 N. E. 247.

This adds another to the rather variegated New York cases previously noticed in 18 MICH. L. REV. 320, 806. In those former cases the public utilities were sometimes granted and sometimes denied release from contract rates. The court recognizes the power of the legislature as paramount to that of the municipality, except where there has been clear grant of the power by the legislature to the municipality to enter into such a contract with the utility. The instant case is decided against the city, Hogan, J., dissenting, on the ground that at the time the franchise was granted the law gave the commission power to raise or lower rates, and municipalities by their contracts may not nullify existing statutes. In a case decided on the same day as the *Nixon* case, *supra,—Niagara Falls* v. *Public Service Com.* (N. Y., 1920), 128 N. E. 247, the court in an opinion written by Hogan, J., who dissented in the *Nixon* case, held that prohibition does lie to restrain action by the commission to change fares fixed in a contract made when the New York statute gave the commission no power over rates fixed by contract with the municipality. The court refused to pass upon whether the legislature under the police power of the state had the power to abrogate such agreements over the objection of the municipality. It was enough for that case that the legislature had three times since the decision of *Quinby* v. *Public Serv. Com.*, 223 N. Y. 244, refused to confer any such power on the commission. See 18 MICH. L. REV. 320. McLaughlin, J., dissented on the ground that the city made the contract subject not merely to the laws as they then existed, but "as they might thereafter be changed by the legislature," citing *Puget Sound T. K. and P. W.* v. *Reynolds*, 244 U. S. 574. See the extensive annotation of this and other cases in 5 L. R. A. 13, 36, 44, 60. The dissenting judge is ready to pass on the point which the court refuses to decide, and takes the broad ground that this police power is "something the state cannot surrender, because to do so would be to surrender a sovereign power." Asserting that the legislature has conferred this power upon the commission he holds that the prohibition would not lie. In still a third case decided on the same day, *People* v. *Nixon*, 128 N. E. 255, the New York court passes on several cases, making the power of the commission over franchises granted by municipalities depend upon the state of the law at the time the franchise was granted. It is still an open question in New York whether the legislature can empower the commission